


**FLSA-757**

January 17, 1983

This is in reply to your letter of December 23, 1982, regarding the payment of overtime premium pay under the Fair Labor Standards Act to an employee compensated by the fluctuating workweek method of computation.

 You state that \*\*\* is paying an employee a guaranteed salary of \$200 per week. When the employee works in excess of 40 hours a week, your client pays him an additional half-time payment for each such hour using the coefficient table. You state that the employee works no more than 55 hours per week, therefore, the guaranteed salary exceeds the hourly minimum wage requirement of \$3.35 an hour. However, your client contemplates paying the employee and a number of other employees with a guaranteed salary for all hours worked with overtime premium pay computed at a higher rate than half time. You present two examples and request our opinion as to whether either, or both would result in compliance with the Act's overtime premium pay requirement.

The first example you illustrate would result in the employee being paid two times one half the regular rate found by dividing the guaranteed salary by the number of hours worked for each hour worked in excess of 40 hours in a workweek. In the second example, the guaranteed salary would be divided by 40 hours and one half this amount would be paid for each hour worked in excess of 40 hours in a workweek.

Section 778.114 of 29 CFR Part 778, copy enclosed, states where all the legal prerequisites for use of the fluctuating workweek method of overtime payment are present, the Act, in requiring that not less than the prescribed premium rate of 50 percent for overtime hours worked be paid, does not prohibit paying more. Thus, if your client's employees clearly understand that they will be paid in accordance with either of the above described plans, it would appear that the plans you outlined would be in compliance with the Act.

Sincerely,

William M. Otter  
Administrator

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 Minimum wage has been increased by later amendments to the Act.